

RECORD OF PROCEEDINGS  
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 97-03679 DEC 30 1998

COUNSEL: None

HEARING DESIRED: No

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APPLICANT REQUESTS THAT:

A recommendation for Squadron Officer School (SOS) and augmentation into the Regular Air Force (RegAF) be added to his Officer Performance Report (OPR) rendered for the period 3 Aug 91 through 14 Jul 92, and his corrected record be considered by Special Selection Board (SSB) for RegAF status by the Calendar Year 1993 (CY93) RegAF Major selection board and for promotion to the grade of **major** by the CY98B (6 Apr 98) Major Board.

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APPLICANT CONTENDS THAT:

1. Recommendations for SOS and augmentation to regular officer were mistakenly omitted from the contested report as confirmed by letters from his additional rater and reviewer during the period in question and by data corroborating his performance and potential for future progression (see Exhibit A).

2. He contends that it was communicated to him by his raters that the reason he did not get a definitely promote (DP) recommendation on his Promotion Recommendation Form (PRF) was due to the OPR in question. He states that officers **up** for promotion from captain to major who receive a DP recommendation historically have experienced a 90+ percent selection rate (see Exhibit A1).

In support of his appeal, the applicant provided a copy of the contested report, statements from the additional rater and reviewer of the report in question, and other documentation relating to his appeal.

Applicant's complete submission is attached at Exhibits A and A1.

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STATEMENT OF FACTS:

The applicant's Total Active Federal Military Service Date (TAFMSD) is 5 Oct 87. He is currently serving on extended active duty in the grade of captain, effective, and with a date of rank (DOR) of 25 Jul 91.

Applicant's OPR/Officer Effectiveness Report (OER) profile follows:

<u>PERIOD ENDING</u>	<u>OVERALL EVALUATION</u>
2 Nov 87	Education/Training Report (TR)
23 May 88	1-1-1
23 Nov 88	Meets Standards
17 Aug 89	Meets Standards
28 Feb 90	Meets Standards
28 Feb 91	Meets Standards
2 Aug 91	Meets Standards
* 14 Jul 92	Meets Standards
14 Jul 93	Meets Standards
24 Jun 94	TR
14 Jul 94	Meets Standards
14 Jul 95	Meets Standards
14 Jul 96	Meets Standards
14 Jul 97	Meets Standards

\* Contested Report.

Two similar appeals were submitted under AFI 36-2401, Correcting Officer and Enlisted Evaluation Reports which were denied by the Evaluation Report Appeal Board (ERAB) on 14 Jul 92 and 12 Mar 97, respectively.

Applicant was considered and not selected for promotion to the grade of major by the CY98B Major Board.

AIR FORCE EVALUATION:

The Chief, Appeals & SSB Branch, AFPC/DPPPA, reviewed this application and indicated that promotion nonselection is not an issue. The applicant has not yet been considered in the promotion zone (IPZ) for promotion to the grade of major by the central major promotion selection board. His contention that the recommendations for SOS and augmentation to RegAF were inadvertently omitted from the contested OPR is not valid. Recommendations to select for a particular Professional Military Education (PME) course, such as SOS, and augmentation are appropriate but not mandatory. Further, Air Force policy is that an evaluation report is accurate as written when it becomes a matter of record and it takes substantial evidence to the contrary to have a report changed or voided. To effectively

challenge an OPR, it is important to hear from all the evaluators from the report—not only for support but for clarification/explanation. In this instance, the applicant failed to provide a letter of support from the rater. The reviewer states that he concurred with the additional rater's evaluation of the applicant, which did not include statements addressing the applicant's potential for recommendation for attendance to SOS or augmentation to RegAF but *after* reconsideration (some three years later), he agrees the deletion of those remarks was an administrative oversight. Neither of the evaluators from the contested report state they now have information that was previously unavailable when they, in good judgment, signed the original OPR and it became a matter of record. In addition, it is not uncommon for evaluators to render a report to an individual and then years later soften their original appraisal of the ratee's duty performance, as memories fade over time. Therefore, an evaluation report is considered to represent the rating chain's best judgment at the time it is rendered. The burden of proof is on the applicant and he has not provided adequate evidence to substantiate the contested report was not rendered in good faith by all evaluators based on knowledge available at the time. DPPPA does not believe the applicant was dealt an injustice.

DPPPA further indicates that evaluation reports receive exhaustive reviews prior to becoming a matter of record. Any report can be rewritten to be more hard hitting, to provide embellishments, or enhance the ratee's promotion potential but the time to do that is before the report becomes a matter of record. None of the supporters of the applicant's appeal explain how they were hindered from rendering a fair and accurate assessment of the applicant's performance prior to the report being made a matter of record and the appeals process does not exist to recreate history or enhance chances for promotion. DPPPA asserts the applicant's OPR was accomplished in direct accordance with Air Force policy in effect at the time the report was rendered and are strongly opposed to replacing it with a new version.

As an aside, while reviewing the applicant's officer selection record (OSR), DPPPA noted a discrepancy on the Air Force Commendation Medal (AFCM), First Oak Leaf Cluster (1OLC) citation. The copy of the citation and order the applicant provided reflect the inclusive dates of service for the decoration were 15 Jul 92 - 14 Sep 95. However, the copy of the citation in the applicant's OSR only covers the period of 15 Jul 92 - 15 Sep 94. In addition, the verbiage on the citations differ. The information on the applicant's CY97C officer selection brief (OSB) (his below the promotion zone major's board) coincides with the order and citation provided by the applicant in his appeal package. DPPPA removed the erroneous citation and inserted the appropriate citation in the applicant's OSR.

A complete copy of the Air Force evaluation, with attachments, is attached at Exhibit C.

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APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant reviewed the Air Force evaluation and disagrees with the advisory opinion and again includes the statements from the additional rater and reviewer of the report in question (see Exhibit E).

In an undated statement, an individual who indicates that he is the applicant's current rater and supervisor states that the contested report may have been pivotal in applicant's nonselection to major (see Exhibit F).

On 7 Jul 98, an individual who indicates that he is the applicant's 2-Letter Chief states that the contested report may have been pivotal in applicant's nonselection to major and states that it is his opinion that the applicant is definitely promotable and capable of serving at the next higher rank (see Exhibit G).

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THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.
  2. The application was timely filed.
  3. Insufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice. After a thorough review of the evidence of record and applicant's submission, including the statements from the additional rater and reviewer of the contested OPR, we are not persuaded that he should be given the requested relief. His contentions are duly noted; however, we do not find these assertions, in and by themselves, sufficiently persuasive to override the rationale provided by the Air Force. We therefore agree with the recommendation of the Air Force and adopt the rationale expressed as the basis for our decision that the applicant has failed to sustain his burden that he has suffered either an error or an injustice. Therefore, we find no compelling basis to recommend granting the relief sought.
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THE BOARD DETERMINES THAT:

The applicant be notified that the evidence presented did not demonstrate the existence of probable material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

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The following members of the Board considered this application in Executive Session on 8 October 1998, under the provisions of Air Force Instruction 36-2603:

Ms. Charlene M. Bradley, Panel Chair  
Mr. Joseph G. Diamond, Member  
Ms. Patricia D. Vestal, Member  
Mrs. Joyce Earley, Examiner (without vote)

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 8 Dec 97, w/atchs.
- Exhibit A1 Letter fr applicant, dated 19 Jun 98, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFPC/DPPPA, dated 27 Jan 98, w/atchs.
- Exhibit D. Letter, AFBCMR, dated 9 Feb 98.
- Exhibit E. Letter fr applicant, dated 6 Mar 98, w/atchs.
- Exhibit F. Letter, SMC/CZU, undated.
- Exhibit G. Letter, SMC/CZ, dated 7 Jul 98.

  
CHARLENE M. BRADLEY  
Panel Chair

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DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS AIR FORCE PERSONNEL CENTER  
RANDOLPH AIR FORCE BASE TEXAS

27 JAN 1998

MEMORANDUM FOR AFBCMR

FROM: HQ AFPC/DPPPA  
550 C Street West, Suite 8  
Randolph AFB TX 78150-4710

SUBJECT:

Requested Action. The applicant requests a **recommendation** for **Squadron Officer School (SOS)** and augmentation to Regular **Air Force (RegAF)** be added to his **officer** performance report (OPR) closing **out 14 Jul 92**. If the board agrees to add the statements, he requests consideration for **RegAF status** by the CY93 RegAF selection board.

Basis for Request. The applicant contends the recommendation for **SOS** and augmentation to RegAF statements were mistakenly **omitted** from the contested report.

Recommendation. Deny.

Facts and Comments.

a. Application is not **timely**. However, if the **AFBCMR** considers, then we recommend denial **due to** lack of **merit**. By law, a claim must be filed **within three years of the date of discovery** of the alleged error or injustice (**10 U.S.C. 1552(b)**). It is obvious that the alleged **errors** claimed here were discoverable at the time they **occurred**. The applicant provided **nothing to convince** us that the alleged errors were not discoverable until April 95, nor **has** he offered a concrete **explanation** for **filing** late. While we would normally recommend the application be denied **as** untimely, we are aware that the **AFBCMR** has **determined** it must adhere to the decision in **the case of Detweiler v. Penu, 38F.3d591 (D.C. Cir 1994)**--which prevents application of the **statute's** time bar if the applicant **has** filed within three years of separation or retirement.

b. **The** applicant submitted two **similar** requests under AFI-36-2401 Correcting **Officer** and Enlisted Evaluation Reports, which were denied by **the** Evaluation Report Appeal Board (ERAB). A copy of the letters announcing the ERAB's decisions, **dated 14 Jul 92** and **12 Mar 97**, are attached to this **advisory**.

c. AFR 36-10, **Officer Evaluation System**, 1 Aug 88, **is the** governing directive. Promotion nonselection is not **an** issue. The applicant **has** not yet **been** considered in-the-**promotion zone (TPZ)** for promotion to the grade of major by the **central** major promotion

d. In support of his appeal, the applicant submits a copy of the contested OPR; a copy of AF Forms 948, Application for Correction/Removal of Evaluation Reports, dated 31 Jan 97 and 6 Apr 95; copy of a memorandum from the additional rater and reviewer from the report; **copy** of the **AF Form 3538**, Retention Recommendation Form, dated 26 Jan 92; AF Form 215, Officer Application for Training, dated 29 Jan 92; and copies of his decorations.

e. The applicant's contention the recommendations for SOS and augmentation to Reg AF were inadvertently omitted **from** the contested **OPR** is not valid. Recommendations to select for a particular Professional Military Education (PME) course, such as SOS, and augmentation are appropriate (AFR 36-10 [C1], para 7a), but not mandatory. Further, **Air** Force policy is that an evaluation report is accurate **as** written **when** it becomes a matter **of** record. It takes substantial evidence to the contrary to have a report changed or voided. To effectively challenge an OPR, it is important to hear **from all** the evaluators from the report--not only for support, but for clarification/explanation. In this instance, the applicant **failed** to provide a letter of support from the rater of the contested report. He did however, provide letters from the additional rater and reviewer of **the** report. The additional rater states, "I considered the applicant **worthy** of recommendation to attend SOS and augmentation **as** a regular officer....Due to **an** administrative error during the preparation, this was not **reflected** on his OPR." The reviewer states he concurred with the additional rater's evaluation of the applicant, which did not include statements addressing the applicant's potential for recommendation for attendance to SOS or augmentation to **Reg AF**; but **after reconsideration**, (some 3 years later), he agrees the deletion of those remarks was an administrative oversight. Neither of the evaluators from the contested report state they now have information that was previously Unavailable when they, in good judgment, signed the original OPR and it became a matter of record. In addition, it is not uncommon for evaluators to render a report to **an** individual, and then **years** later, soften their original appraisal of the **ratee's** duty performance, **as** memories fade over time. Therefore, an evaluation **report** is considered to represent the rating chain's best judgment at the time it is rendered. The burden of proof is on the applicant. He has not provided adequate evidence to substantiate the contested report was not rendered in good faith by all evaluators based on knowledge available at the time. We, therefore, do not believe the applicant was dealt an injustice.

f. Evaluation reports receive exhaustive reviews prior to becoming a matter of record. **Any** report **can** be rewritten to be more **hard** hitting, to provide embellishments, or enhance the ratee's promotion potential. But the time to do that is before the report becomes a **matter** of record. None of the supporters of the applicant's appeal explain how they were hindered from rendering a **fair** and accurate assessment of the applicant's performance prior to the report **being** made a matter of record. The appeals process does not exist to recreate history or **enhance** chances for promotion. We assert the applicant's OPR was accomplished in direct accordance with **Air** Force policy in effect at the **time** the report was rendered and **are** strongly opposed to replacing it with a new version.

g. While reviewing the applicant's officer selection record (OSR) we noted a discrepancy on the Air Force Commendation Medal, 1<sup>st</sup> **Oak** Leaf Cluster (**AFCM**, 1OLC)

citation. The copy of the citation and order the applicant provided reflect the inclusive dates of service for the decoration were 15 Jul 92 - 14 Sep 95. However, the copy of the citation in the applicant's OSR only covers the period of 15 Jul 92 - 15 Sep 94. In addition, the verbiage on the citations differ. The information on the applicant's P0497C officer selection brief (OSB) (his below-the-promotion zone major's board) coincides with the order and citation provided by the applicant in his appeal package. We have, therefore, removed the erroneous citation and inserted the appropriate citation in the applicant's OSR.

Summary. The applicant has failed to substantiate the OPR was flawed. We do not believe SSB consideration is warranted.

  
MARIANNE STERLING, Lt Col, USAF  
Chief, Appeals & SSB Branch  
Dir of Personnel Program ~~MJC~~

cc:  
SAF/MIBR

Atch:  
1. HQ AFPC/DPPPAE Ltr, 14 Jul 92  
2. HQ AFPC/DPPPAE Ltr, 12 Mar 97

14 JUL 92

MEMORANDUM FOR SS MBS/DPMPPE

FROM: HQ AFMPC/DPMAJAZ  
550 C Street West, Suite B  
Randolph AFB TX 78150-4710

SUBJECT: AFI 36-2401 Decision  
Report Closing 14 July 1992

The Evaluation Report Appeal Board (ERAB) denied the attached appeal application. The Board considers an evaluation report to be an accurate assessment when rendered; therefore, substantial evidence is required to challenge a report's accuracy. As you are aware, the Military Personnel Flight is responsible for providing members counseling on their applications submitted under AFI 36-2401. As such, to assist you in counseling the applicant, this letter provides our assessment of the application. We believe the Board wasn't convinced by documentation. The change to Section VI is not supported by the rater and the Board can not change his comments without his support. While the Additional Rater alludes to an "administrative error" he does not explain what the "error" was or how it occurred. We note that the DPR Notice specifically points out if an officer is reserve and reminds evaluators that an augmentation recommendation may be appropriate. A willingness by evaluators to change or void a report isn't a valid basis for doing so unless there is also clear evidence of error or injustice being involved.

After counseling, please provide this letter announcing the Board's decision to the applicant. The member can gather new material evidence and reapply under AFI 36-2401, but the original documentation submitted with this appeal should be included with the new application. While we cannot guarantee a favorable decision will result from the additional evidence submitted by the member, we will ensure it is processed as fast as possible. Another avenue available is the member can elect to appeal under AFR 31-3 to the Air Force Board for Correction of Military Records.

*SAS*  
SHARON A. BRANCH, Lt Col, USAF  
Chief, SSB and Appeals Branch  
Directorate of Pers Prgm Mgmt

9703679

12 March 1997

**MEMORANDUM FOR 61 MSS/DPMPE**

**FROM: HQ AFPC/DPPFAE**  
550 C Street West, Ste 8  
Randolph AFB, TX 78150-4710

**SUBJECT: AFI 36-2401 Decision:**  
Report Closing: 14 Jul 92

The Evaluation Report Appeal Board declined to formally review the attached application and directed that it be returned without action. No new material evidence has been added to the case that wasn't already considered by the Board (AFI 36-2401, paragraph 3.6.1). In fact, the application is identical to the package the Board denied in Apr 95. If the applicant is unable to obtain additional material evidence to support his case, we recommend the option of applying under AFI 36-2603, as outlined below, if another review of the appeal is desired.

We emphasize that this is not a denial of application, but a declination by the Board to formally reconsider a case in which no "new" evidence is presented. may gather new material evidence and reapply under AFI 36-2401, but the original documentation submitted with this appeal should be included with the new application. While we cannot guarantee a favorable decision will result from the additional evidence submitted by the member, we will ensure the case is processed as fast as possible. Another avenue available to the member is to appeal under AFI 36-2603 to the Air Force Board for Correction for Military Records.

SIGNED  
MARIANNE STERLING, Lt Col, USAF  
Chief, Appeals & SSB Branch  
Directorate of Pers Prgm Mgmt